IN THE
SUPREME COURT OF THE UNITED STATES
OCTOBER TERM, 1977

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SUPREME COURT, U.S.

No. 77-6219

THOMAS BALDASAR,

Petitioner,

v.

PEOPLE OF THE STATE OF ILLINOIS,

Respondents.

ORIGINAL COPY

On Petition For A Writ Of Certiorari
To The Appellate Court of Illinois,
Second Judicial District.

BRIEF FOR RESPONDENTS IN OPPOSITION

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QUESTION PRESENTED FOR REVIEW

Whether the use of a counseless misdemeanor conviction, obtained by a plea of guilty, to enhance a sentence, conflicts with this Court's decisions on the right to and need for counsel.

REASON FOR DENYING THE WRIT OF CERTIORARI

THE USE OF A COUNSELESS MISDEMEANOR CONVICTION, OBTAINED BY A PLEA OF GUILTY, TO ENHANCE A SENTENCE, DOES NOT CONFLICT WITH THIS COURT'S DECISIONS ON THE RIGHT TO AND NEED FOR COUNSEL.

A conviction obtained after a trial in which the defendant was denied the assistance of a lawyer lacks reliability. Loper v. Beto, 405 U.S. 473, 92 S.Ct. 1014, 1019, 31 L.Ed.2d 374 (1972). The admission of a prior criminal conviction which was introduced for the purpose of enhancing punishment, and which was constitutionally infirm under the standards of Gideon v. Wainwright, 372 U.S. 335, 83 S.Ct. 792, 9 L.Ed.2d 799 (1963), is inherently prejudicial. Burgett v. Texas, 398 U.S. 109, 88 S.Ct. 258, 262, 19 L.Ed.2d 319 (1967). Both Loper and Burgett were concerned with felony convictions as opposed to misdemeanor convictions. The standard of Gideon, to which this Court referred in Burgett, is that it is unconstitutional to try a person for a felony in a state court unless he has a lawyer or has validly waived one.

In Argersinger v. Hamlin, 407 U.S. 25, 92 S.Ct. 2006, 32 L.Ed.2d 530 (1972), this Court did not state that it is unconstitutional to try a person for a misdemeanor or to accept a guilty plea in a state court unless he has a lawyer or has validly waived one. It stated:

> We need not consider the requirements of the Sixth Amendment as regards the right to counsel where loss of liberty is not involved, however, for here petitioner was in fact sentenced to jail. 92 S.Ct. 2006 at 2012.

Constitutionally obtained convictions may be used collaterally. Therefore, in the present case, the Illinois Court's use of the petitioner's uncounseled misdemeanor conviction, which did not result in imprisonment, to enhance his sentence, is proper.

As the Illinois Appellate Court reasoned,

> In Argersinger, the court held that no person may be imprisoned for any offense, petty, felony or misdemeanor, unless he is represented by or has effectively waived his right to counsel at trial. It directed itself only to cases wherein an uncounseled defendant had been convicted of a criminal offense and was then sentenced to imprisonment for that offense and that conviction. There is no language in the opinion suggesting a prospective application or readjudication of a defendant's right to counsel should he be convicted in the future of the commission of another offense and be then subject to another sentence. The notion that repeat offenders are subject to enhanced penalties for their conduct is so basic to our criminal justice system that it could not have escaped the notice of the Argersinger court. Yet, it carefully limited its holding to a conviction and the sentence imposed for that conviction.
>
> (emphasis added)

People v. Baldasar, 52 Ill. App. 3d 305, 10 Ill. Dec. 71, 367 N.E.2d 459, 461 (2d Dist. 1977).

This Court stated that under the rule announced in Argersinger,

> . . . every judge will know when the trial of a misdemeanor starts that no imprisonment may be imposed, even though local law permits it, unless the accused is represented by counsel. He will have a measure of the seriousness and gravity of the offense and therefore know when to name a lawyer to represent the accused before the trial starts.
>
> The run of misdemeanors will not be affected by today's holding. But in those that end up in the actual deprivation of a person's liberty, the accused will receive the benefit of "the guiding hand of counsel" so necessary when one's liberty is in jeopardy. 92 S.Ct. 2006 at 2014.

However, if this Court were to prohibit the use of counseless misdemeanor convictions for enhancement purposes, as the petitioner suggests, the decision whether to appoint counsel would have to be made in each misdemeanor trial, not only on the basis of whether imprisonment would be an available sentencing alternative, but also on the basis of whether, if convicted and only fined, the conviction would have a potential collateral effect on liberty. The "run of misdemeanors" would be affected by such a decision. Such a holding would, in effect, extend the right to counsel in all misdemeanor cases.

In Cottle v. Wainwright, 477 F.2d 269 (5th Cir. 1973), the court made a distinction between a conviction without assistance of counsel where a jail sentence was imposed and one where there was no jail sentence. Cottle involved a parole revocation. The Court held that a parole could not be revoked on the basis of prior invalid convictions and that, since Cottle's first misdemeanor conviction, without assistance of counsel, did not result in his imprisonment, the conviction was valid and could be considered. However, the Court held that a second such conviction, which did result in a sentence of imprisonment, was constitutionally invalid and could not be considered.

On appeal in the Illinois Appellate Court, the petitioner admitted that his first theft conviction was not void under Argersinger. People v. Baldasar, 367 N.E.2d 459 at 461. Yet, petitioner claims that counseless misdemeanor convictions, such as his first theft conviction, are "inherently unreliable" when obtained without counsel. Petition for Writ of Certiorari at 4. If not void when adjudicated, a conviction can be no less valid in the future when used to enhance a sentence. To say that a conviction is valid but unreliable is unreasonable.

C O N C L U S I O N

For the foregoing reasons, respondents request that the Petition for Writ of Certiorari be denied.

Respectfully submitted,

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